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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 JOSEPH VICTOR LAGANA,

12 Petitioner,

13 v.

14 PEOPLE OF THE STATE OF  
15 CALIFORNIA, SUPERIOR  
16 COURT, AND SHERIFF IAN  
PARKINSON,

17 Respondents.  
18  
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No. CV 19-01360-DOC (JDE)

ORDER TO SHOW CAUSE WHY  
THE PETITION SHOULD NOT BE  
DISMISSED

20 On February 13, 2019, the Court received a Petition for Writ of Habeas  
21 Corpus by Joseph Victor Lagana ("Petitioner"). Dkt 1 ("Petition" or "Pet.")).  
22 Pursuant to Rule 4 of Rules Governing Section 2254 Cases in the United States  
23 District Courts ("Habeas Rules"), the Court must review the Petition and, if it  
24 plainly appears from the Petition and any attached exhibits that Petitioner is  
25 not entitled to relief, dismiss the Petition.

26 Here, as set forth below, the Petition appears subject to dismissal in  
27 accordance with Younger v. Harris, 401 U.S. 37 (1971).  
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1 I.

2 RELEVANT PROCEDURAL HISTORY

3 Petitioner asserts that he is being prosecuted in the Superior Court for  
4 the County of San Luis Obispo in Case No. 18F-11847 and is currently  
5 “unsentenced” / “not yet sentenced.” Pet. at 1-2. He asserts he is in custody at  
6 the San Luis Obispo County Jail. Id. at 1-2. In response to a question “If you  
7 went to trial, what kind of trial did you have,” Petitioner circled “Jury.” Id. at  
8 2. Petitioner states he has not appealed any conviction to the California Court  
9 of Appeal or California Supreme Court. Id. at 3. Plaintiff has, however, filed a  
10 federal civil rights lawsuit in this District. Id. (see also Joseph Victor Lagana v.  
11 State of California, et al., United States District Court, Central District of  
12 California, Case No. 2:19-cv-00456-DOC (JDE)). Plaintiff had not presented  
13 any of his proposed grounds for relief to any other court “because they just  
14 [happened] on January 23 2019 and I don’t have ‘pro-per’ status anymore.”  
15 Pet at 5.

16 II.

17 YOUNGER ABSTENTION APPEARS APPROPRIATE

18 Under the Younger abstention doctrine, a federal court will not intervene  
19 in a pending state criminal proceeding absent extraordinary circumstances.  
20 Younger, 401 U.S. at 43-54. Younger abstention is appropriate when: (1) the  
21 state court proceedings are ongoing; (2) the proceedings implicate important  
22 state interests; and (3) the state proceedings provide an adequate opportunity  
23 to raise federal questions. Baffert v. Cal. Horse Racing Bd., 332 F.3d 613, 617  
24 (9th Cir. 2003). The Younger rationale applies throughout appellate  
25 proceedings, requiring that state appellate review of a conviction be exhausted  
26 before federal court intervention is permitted. Huffman v. Pursue, Ltd., 420  
27 U.S. 592, 607-611 (1975); Dubinka v. Judges of the Superior Court of the State  
28 of Cal., 23 F.3d 218, 223 (9th Cir. 1994) (stating that even if the trial was

1 complete at the time of the court's decision, state court proceedings were still  
2 considered pending for Younger abstention purposes).

3 Here, all of the Younger criteria are present. First, Petitioner's state court  
4 proceedings are ongoing as he has not yet been sentenced by the trial court and  
5 he may appeal and/or seek state habeas relief after his sentencing. Second, a  
6 state's task of enforcing its laws against socially harmful conduct is "important  
7 and necessary," Younger, 401 U.S. at 51-52, and as such, the state proceedings  
8 implicate important state interests. Third, because the sentencing will result in  
9 the ultimate judgment, see Burton v. Stewart, 549 U.S. 147, 156, (2007) (per  
10 curiam) ("[t]he sentence is the judgment'") (citation omitted), Petitioner still  
11 has an adequate state forum in which to pursue his claims. See Pennzoil Co. v.  
12 Texaco, Inc., 481 U.S. 1, 15 (1987) ("[W]hen a litigant has not attempted to  
13 present his federal claims in related state-court proceedings, a federal court  
14 should assume that state procedures will afford an adequate remedy, in the  
15 absence of unambiguous authority to the contrary."). As such, this Court must  
16 abstain from intervening in the ongoing state criminal proceedings absent  
17 extraordinary circumstances. Canatella v. California, 404 F.3d 1106, 1109-10  
18 (9th Cir. 2005).

19 Abstention is not appropriate if the state proceedings are being  
20 undertaken in bad faith, to harass, or are based on "flagrantly and patently"  
21 unconstitutional state rules, or where some other extraordinary circumstance is  
22 present. See Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n, 457  
23 U.S. 423, 435-37 (1982). Additionally, irreparable injury alone is insufficient to  
24 warrant federal intervention unless the irreparable injury is both great and  
25 immediate. See Younger, 401 U.S. at 46. Here, it does not appear that the  
26 circumstances of Petitioner's case fall within any recognized exception to the  
27 Younger doctrine.

1 For the foregoing reasons, it appears that Younger abstention is  
2 appropriate in this case. A stay of the proceedings is unnecessary as  
3 Petitioner's judgment is not yet final and the one-year limitations period under  
4 28 U.S.C. § 2244(d) has not commenced. See United States v. LaFromboise,  
5 427 F.3d 680, 683 (9th Cir. 2005) (as amended); see also Burton, 549 U.S. at  
6 156 ("Final judgment in a criminal case means sentence. The sentence is the  
7 judgment." (citation omitted)).

8 **III.**

9 **CONCLUSION**

10 Accordingly, Petitioner is ORDERED to show cause, in writing, by no  
11 later than thirty (30) days from the date of this Order, why the Petition should  
12 not be dismissed as premature pursuant to the Younger abstention doctrine.  
13 **Alternatively, Petitioner may dismiss this action by signing and returning**  
14 **the attached Notice of Dismissal under Federal Rule of Civil Procedure**  
15 **41(a).**

16 Petitioner is cautioned that a failure to respond timely in compliance  
17 with this Order will result in a recommendation that this action be dismissed  
18 pursuant to the Younger abstention doctrine, as well as for failure to prosecute  
19 and failure to comply with a Court order.

20  
21 Dated: March 04, 2019

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23 JOHN D. EARLY  
24 United States Magistrate Judge  
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